BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-737-W/S - ORDER NO. 95-383

FEBRUARY 16, 1995

IN RE: Application of Heater of Seabrook, Inc. for Approval of a New Schedule of Rates and Charges for Water and Sewer Service. ) ORDER DENYING ) PETITION FOR ) REHEARING

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Town of Seabrook Island's (the Town's) Petition for Rehearing of our Order No. 95-9. For the reasons stated below, this Petition must be denied.

The first issue presented by the Town of Seabrook is whether or not it received proper notice of the January 3, 1995 "PSC Hearing" which granted the utility's (Heater of Seabrook's) bond Motion. The response provided by Heater of Seabrook, Inc. (Heater) is a fair statement of the law in this area as we see it. Following the issuance of an Order by the Honorable Jean Toal, Associate Justice of the Supreme Court, remanding the matter of the Company's bond to the Commission, the Commission added the issue of the approval of the bond amount and surety to its regular Tuesday meeting schedule for January 3, 1995. The Town has incorrectly characterized this matter as a "formal proceeding" within the meaning of R. 103-821(A). However, it should be noted that the bond matter does not constitute any of the proceedings denominated as "formal" under R. 103-821(A). Therefore, as Heater of Seabrook, Inc. contends, the requirement of holding a public hearing and

service of notice of hearing upon the Town under R. 103-821(C)(3)(b) and (4) are inapplicable. Even assuming that this matter does constitute a formal proceeding, the requirement of the hearing can be dispensed with, if the Commission finds that such a hearing is not necessary to protect the public interest or substantial rights. See R. 103-821(C)(2). As Heater of Seabrook, Inc. correctly states under South Carolina law, notice of the matters to be taken up at the regular weekly Commission meetings are only required to be posted twenty-four (24) hours prior to the meeting on the bulletin board at the meeting place of the Public Service Commission. See S.C. Code Ann. §30-4-80(a) (1976, as amended), and R. 103-815. Nothing contained within Justice Toal's Order required any action by the Public Service Commission other than approval of the amount of the bond and surety. See Toal Order dated December 29, 1994 at 2 and 3.

We agree with Heater of Seabrook, Inc. when it states that nothing contained within S.C. Code Ann. §58-5-240(D) (1976, as amended) requires that a full blown hearing be conducted. The statute does not purport to give the PSC any discretion as to whether the utility may place the rate increase into effect under bond; the statute merely makes PSC approval of the amount of the bond and the identity of the surety a condition precedent. As Heater of Seabrook contends, under these circumstances, a full hearing is unnecessary to protect the interests of the public or other affected parties, because their interest will be adequately protected by the posted bond in the event that the rates put into effect thereunder are ultimately found to be excessive. See also,

Holt v. Yonce et. al., 370 F. Supp. 374, (USDC, S.C., 1973) which held that the Commission setting a bond without a formal hearing under the former temporary provision for electric service did not violate the Due Process Clause.

Finally, we take Administrative Notice of the Order of the full Supreme Court in this matter, issued on or about February 10, 1995. This Order affirms Justice Toal's opinion that S.C. Code Ann. §58-5-240(D) governs, and, in cases such as this where an increase is denied, requires the Commission to approve the utility's bond and surety when the utility wishes to put a denied rate increase into effect under bond. Although the Court states that it is only logical that the Commission "conduct hearings" for the approval of bonds and sureties, the Court notes that §58-5-240(D) sets the standards for Commission review of the affected utility's bond and surety. As was stated, we do not believe that anything in §58-5-240 requires a full blown hearing. We believe therefore that the mention of the words "conduct hearings" in the full Supreme Court opinion is mere dicta, and is no basis for granting the relief sought by the Town.

Second, the Town of Seabrook contends that a hearing should be required on the Bond Motion because the PSC has the authority to approve other arrangements for the protection of the interested parties. We agree with Heater of Seabrook, Inc. when it states that rather than giving the Commission discretion to impose other forms of security for the public interest, S.C. Code Ann. §58-5-240(D) may more properly be interpreted as giving the utility the option of offering other security in lieu of posting bond. As

is stated in the Return provided by Heater of Seabrook, Inc., the Commission still has to approve of the alternate means of security for the protection of the parties involved. §58-5-240(D) expresses a clear legislative preference for the use of surety bond, but does grant some leeway for the use of other methods if they are satisfactory to the Commission.

It should be noted that in our opinion, the use of a surety guarantees the repayment of rates which are ultimately determined to be excessive. Alternative methods, such as escrow accounts, do not provide such assurances as adequate revenues may not be obtained to fully reimburse the customers.

In any event, we believe that the approval of the bond in our Order No. 95-9 fully satisfies the Commission's duty to protect the interests of the public. As is stated by Heater of Seabrook, Inc., Orders of the Public Service Commission are presumptively correct and the party challenging the Order bears the burden of proving that the decision is clearly erroneous. See Patton v. South Carolina Public Service Commission, 280 S.C. 388, 312 S.E.2d 257 (1984). The Town of Seabrook Island has clearly failed to demonstrate that the Commission erred in approving the bond and for

this reason the Petition for Rehearing must be denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Rudolph Mitchell
Chairman

ATTEST:

Charles W. Wallace
Executive Director

(SEAL)